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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,670	09/18/2003	Heather Lynn Focht	9042M	8580
27752	7590	07/23/2008		
THE PROCTER & GAMBLE COMPANY			EXAMINER	
Global Legal Department - IP			CHANNAVAJALA, LAKSHMI SARADA	
Sycamore Building - 4th Floor				
299 East Sixth Street			ART UNIT	
CINCINNATI, OH 45202			PAPER NUMBER	
			1611	
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			07/23/2008	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/665,670

Applicant(s)

FOCHT ET AL.

Examiner

Lakshmi S. Channavajjala

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7-14 and 19-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-14 and 19-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt of amendment and response dated 4-28-08 is acknowledged.

Claims 1, 2, 4-5, 7-14 and 19-29 are pending in the instant application.

Response to Arguments

1. Applicant's arguments filed 4-28-08 have been fully considered but they are not persuasive.
2. The following rejection of record has been maintained:

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4-5, 7-14 and 19-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,612,307 to Chambers in view of US 6,534,456 to Hayward et al.

Chambers discloses an aqueous composition that comprises a cleansing portion and a moisturizing portion, wherein the former comprises 1% to 35% surfactant, water, thickener such as gaur gum (col. 2, col. 3, L 15-16, example formulation B of col. 8) and the latter comprises an emollient that reads on the instant hydrophobic material because Chambers discloses the same oils, lipids etc., that are described in the instant invention (col. 2). The composition of Chambers upon dispensing forms individual stripes of the benefit agent and base formulation (surfactant) (col. 8, L 65-67). The benefit phase of Chambers does not contain water or surfactants and hence reads on the instant substantially anhydrous limitation (examples in col. 11, L 11-20). Instant

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specification describes certain hydrophobic materials that possess the claimed solubility parameter (page14) and because the same hydrophobic materials are also employed by Rattinger (entire col. 4); hence the claimed solubilities, Shear Index and consistency values (claims 7-8) are inherent to the emollients of Chambers. With respect to claims 15 and 16, the composition of Chambers form stripes. With respect to claim 19, the claimed method of using the composition is inherent to the composition of Chamber, because the composition is meant to be used by applying the required amount and rinsing the skin or hands with the water after washing.

Chambers fail to teach a physical contact between the two phases.

Hayward discussed the teachings of Chambers in the introduction section. Hayward teaches that the composition of Chambers and other prior art require that the composition is separated until use so as to be able to deposit the benefit agents while still cleaning. However, Hayward suggests an improvement over the above compositions and suggests a packaged, stable, extrudable, multiphase liquid cleansing composition comprising a lamellar and an isotropic phase. The composition of Hayward is present in a single container and is packed without any partitions i.e., are in physical contact (col. 4, L 1-50). Example 2 of Hayward teaches a composition with a lamellar phase comprising surfactant, oil, glycerin, perfume, water, citric acid, crodalan, glycerin, edta, citric acid etc., and isotropic phase comprises a surfactant, water, sodium hydroxide, acrylate polymer etc. Thus, the two phases exemplified in the above composition reads on the instant first stripes. Hayward teaches that the components can be packed without barriers when the viscosities of the two phases are compatible

and that the rheological behavior of the cleansing surfactants depends on the microstructure. Hayward further suggests ways to control the flow properties of both phases (flowing versus thick) so as to be able to pump the compositions together (col. 2-5). Thus, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the rheological properties of two phases of the composition of Chambers so as to be able suspend both the phases together without any partition between the phases and thus extrude them together as stripes and still be able to maintain the viscosity because Hayward teaches several ways to alter the viscosity of the lamellar and isotropic phases so as to obtain a desired final product where the lamellar phase do not lather as the isotropic phase does and the isotropic phase does not deposit the skin care ingredients as the lamellar structures. Thus, a stable composition containing both components that are in contact and yet do not affect each other in performance is expected.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5612307 to Chambers in view of US 6534456 to Hayward et al, as applied to claims 1, 2, 4-5, 7-14 and 19-29 above, and further in view of US 2003/0180246 to Frantz et al.

Chambers and Hayward discussed above fails to teach the claimed cleaning phase with alkanolamides.

Frantz teaches a stable surfactant composition for suspending components in compositions such as shampoos, cleansers, body washes etc., including striped compositions (abstract, para 0122). Frantz teaches that the surfactant containing

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suspending formulations (reads on instant cleansing phase) comprise an anionic surfactant, water, electrolyte and an alkanolamide, for imparting a free-flowing non-Newtonian shear thinning property to the composition (abstract, 0017-0048). In particular, the alkanolamides of 0045 have the same structure as that described in the instant specification and also employed for the same purpose as claimed. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ the alkanolamide of Frantz in the cleansing phase of Chambers (containing a composition with the two phases in close contact) because Frantz suggests that the suspending phase comprising alkanolamide in addition to an anionic surfactant, water and an electrolyte (the cleansing phase of Chambers contain all three components col.8-formulation B) impart a free-flowing and non-Newtonian shear thinning property that provides the ability to suspend components or "benefit agents" such as oils, skin care agents etc (Frantz 0073-0076). A skilled artisan would have expected to achieve a free-flowing cleansing phase with a non-Newtonian shear thinning.

Response to Arguments

Applicant's arguments filed 4-28-08 have been fully considered but they are not persuasive.

Applicants argue that regardless of the supporting rationale, the Patent Office must clearly articulate facts and reasons why the claimed invention "as a whole" would

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have been obvious to a hypothetical person of ordinary skill in the art at least as of the filing date. It is argued that Chambers and Hayward are not properly combinable because the principle of operation of Chambers would be modified in view of Hayward and that modifying the principle of operation of Chambers in view of Hayward would render the compositions of Chambers unsatisfactory for their intended purpose by using the single chamber of Hayward. It is argued that in reading Chambers, one of ordinary skill in the art would be discouraged from having a surfactant phase and benefit agent and/or oil an emollient in physical contact within a partitionless package, as described in Hayward. It is argued that Chambers teaches separation of the surface active agent and benefit agent to avoid adverse interactions which may occur between these two components and resulting in ineffective deposition of the benefit agent (See Chambers column 1, lines 65-67). Applicants' arguments are not persuasive because a prima facie obviousness may be established if known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. In the instant case, the cited art teaches both separating as well not separating the two phases (Chambers and Hayward respectively) and Hayward teaches that the components can be packed without barriers when the viscosities of the two phases are compatible and that the rheological behavior of the cleansing surfactants depends on the microstructure. Thus, one of an ordinary skill in the art would be able to vary the principle of Chambers and still expect a benefit of being able to deposit benefit agents effectively. In the instant combination, the proposed modification only

improvement of the prior art composition and thus does not affect the principle. Besides, it is evident from the teachings of Hayward et al and Chambers et al that both references are assigned to the same assignee i.e., Unilever and Hayward reference clearly provides Chambers as a background information or prior art and suggests an improvement over the latter to avoid the problems of instability, insufficient moisturizer, benefit agents sensitive to surfactants etc. Hayward suggests providing both lamellar and an isotropic phase in a single composition that is extrudable, stable and yet remains separate. It is argued that the references are not combinable because the composition of Chambers are anhydrous (benefit phase) as opposed to the composition of Hayward that is aqueous. The argument is not persuasive because nowhere does Chambers state that the benefit phase should be free of water and instead only mentions that separation of the two phases was due to the instability problems that might occur due to the incompatibility of the components of the two phases. Hayward recognizing the incompatibility problems suggests ways to overcome the same and yet maintain the two phases in the same package without a partition. Hence the argument that the combination of the cited art teaches away from the claimed invention is not persuasive.

Applicants argue that Frantz does not overcome the deficiencies of Chambers and Hayward and hence instant application is patentably distinct from the cited prior art teachings. The argument is not persuasive because Frantz has not been cited for the teachings of the two phases being in contact and instead is cited for the alkanolamides,

which applicants did not argue. The rationale to combine Hayward and Chambers has been explained and hence the rejection has been maintained.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lakshmi S Channavajjala/
Primary Examiner,
Art Unit 1611
July 20, 2008